

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

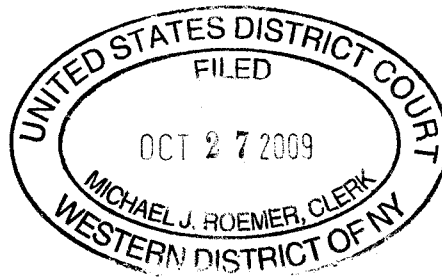
L.R. HUFFMAN,

Plaintiff,

-v-

MICHAEL BENSON,

Defendant.



-PS-O-

DECISION AND ORDER
05-CV-0867S

Plaintiff, L.R. Huffman, has filed a motion for an extension of time to file a notice of appeal from an Order and Judgment, both entered September 25, 2009 (Docket Nos. 37 and 38), on the basis that he is receiving "cancer treatment and hospitalizations along with being 'out to court' pending a federal sentence." (Docket No. 39). Attached to the motion is a document entitled "Appeal Notice" which sets forth what appears to be the bases of the appeal. The Clerk of the Court has docketed the motion and attached documentation as a "Notice of Appeal" (Docket No. 39), and the Court finds that the motion for an extension of time, which was filed within the time for filing a notice of appeal, *see* Fed.R.Civ.P. 4(a)(1)(A), can and should be construed as a Notice of Appeal as it was docketed. *See, e.g., Chambers v. U.S.*, 106 F.3d 472, 475 (2d Cir. 1997) (*Pro se* petitions should be characterized according to the relief sought, and not to the label given to them by pro se prisoners unlearned in the law). The Clerk of the Court has transmitted the motion, which was docketed as a Notice of Appeal, to the United States Court of Appeals for the Second Circuit.

Accordingly, plaintiff's motion for an extension of time to file a notice of appeal is denied as moot, and the motion shall hereinafter be construed as a Notice of Appeal.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

DATED: October 26, 2009
Rochester, New York